

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-4617  
November 14, 2013**

**REDACTED**

**R E S O L U T I O N**

Resolution E-4617. Pacific Gas and Electric Company requests approval of two agreements for the procurement of renewable energy credits from Barclays Bank PLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for Pacific Gas and Electric Company's agreements to procure renewable energy credits from Barclays Bank PLC.

SAFETY CONSIDERATIONS: This Resolution approves two agreements for the purchase of RECs from out-of-state wind facilities and thus is not expected to have any impact on public safety.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letters (AL) 3600-E filed on January 26, 2010 (as supplemented by AL 3600-E-A filed on October 20, 2010; AL 3600-E-B filed on February 9, 2011; and AL 3600-E-C filed on May 17, 2013) and 3632-E filed on March 12, 2010 (as supplemented by AL 3632-E-A filed on October 29, 2010; AL 3632-E-B filed on February 9, 2011; and AL 3632-E-C filed on July 26, 2013).

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**SUMMARY**

**Pacific Gas and Electric Company's (PG&E) two agreements for the purchase of renewable energy credits (RECs) from Barclays Bank PLC (Barclays) are approved.**

Pursuant to its obligations under California's renewables portfolio standard (RPS) at the time that the Barclays Agreements were executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by

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December 31, 2010, subject to various compliance rules. In an effort to meet this compliance obligation, PG&E executed the Barclays Agreements in 2010.

Advice Letter 3600-E/E-A/E-B/E-C

PG&E filed Advice Letter (AL) 3600-E on January 6, 2010, as modified by ALs 3600-E-A/E-B/E-C, requesting the California Public Utilities Commission's (Commission) approval of the purchase and transfer of RECs from Barclays associated with renewable generation from the existing 100 megawatt (MW) Hay Canyon wind facility in Oregon. PG&E executed the original agreement with Barclays through bilateral negotiations.

Pursuant to the terms of the amended agreement, PG&E would pay for and accept deliveries of 250 gigawatt-hours (GWh) per year of energy from Barclays in 2010 and 2011, pursuant to existing authority<sup>1</sup> for PG&E to acquire short-term energy deliveries. This resolution does not address PG&E's authority to acquire these energy deliveries, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

Note that, originally, PG&E sought approval from the Commission to procure the RECs associated with both the 2010 and 2011 energy generation from the Hay Canyon wind facility. In May 2013, PG&E filed AL 3600-E-C to reduce the price of the RECs associated with generation from Hay Canyon and also to remove the RECs associated with the 2010 energy generation from the Hay Canyon agreement.

The agreement, as modified, would now require Barclays to transfer to PG&E only the RECs associated with the 250 GWh of energy generation (250,000 RECs<sup>2</sup>) from 2011 upon Commission approval of Advice Letter 3600-E/E-A/E-B/E-C.

Advice Letter 3632-E/E-A/E-B/E-C

PG&E filed Advice Letter AL 3632-E on March 12, 2010, as modified by AL 3632-E-A/E-B/E-C, requesting Commission approval of the purchase and transfer of RECs from Barclays associated with renewable generation from the

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<sup>1</sup> PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) authorized it to procure the energy associated with this transaction without prior Commission approval.

<sup>2</sup> One REC represents the renewable attributes associated with one MWh of eligible renewable generation.

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existing 32 MW Nine Canyon Wind Phase III facility in Washington State. PG&E executed this agreement with Barclays through bilateral negotiations.

Pursuant to the terms of the agreement, PG&E would pay for and accept deliveries of 33 GWh per year of energy from Barclays in 2010 and 2011, pursuant to existing authority<sup>3</sup> for PG&E to acquire short-term energy deliveries. This resolution does not address PG&E's authority to acquire these energy deliveries, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

Note that, originally, PG&E sought approval from the Commission to procure the RECs associated with both the 2010 and 2011 energy generation from the Nine Canyon wind facility. In July 2013, PG&E filed AL 3632-E-C to reduce the price of the RECs associated with generation from Nine Canyon and also to remove the RECs associated with the 2010 energy generation from the Nine Canyon agreement.

The agreement, as modified, would now require Barclays to transfer to PG&E only the RECs associated with the 33.6 GWh of energy generation (33,577 RECs) from 2011 upon Commission approval of Advice Letter 3632-E/E-A/E-B/E-C.

This resolution approves cost recovery for the RECs associated with 2011 energy generation as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C. The Commission is approving these advice letters for two reasons:

- (1) PG&E has made a preliminary showing that the RECs associated with the 2011 energy generation from the Hay Canyon and Nine Canyon wind facilities may be used for all RPS compliance purposes, consistent with D.11-12-052 and D.12-06-038.
- (2) The reduced price of the RECs associated with the 2011 energy generation from the Hay Canyon and Nine Canyon wind facilities, as filed through AL 3600-E-C and AL 3632-E-C, is reasonable to ratepayers.

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<sup>3</sup> PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) authorized it to procure the energy associated with this transaction without prior Commission approval.

**BACKGROUND****Overview of the Renewables Portfolio Standard (RPS) Program**

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).<sup>4</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.31.<sup>5</sup> Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

**NOTICE**

Notice of Advice Letters 3600-E, 3600-E-A, 3600-E-B, 3600-E-C, 3632-E, 3632-E-A, 3632-E-B, and 3632-E-C was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

**PROTESTS**

PG&E's AL 3600-E was timely protested by the Division of Ratepayer Advocates (DRA) on February 16, 2010. PG&E responded to DRA on February 23, 2010.

PG&E's AL 3600-E-A was also protested by DRA on November 9, 2010. PG&E responded to DRA on November 16, 2010.

PG&E's AL 3632-E was timely protested on March 30, 2010 by DRA. PG&E responded to DRA on April 8, 2010.

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<sup>4</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

<sup>5</sup> All further references to sections refer to Public Utilities Code unless otherwise specified.

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PG&E's AL 3632-E-C was timely protested on August 15, 2013 by the Marin Energy Authority (MEA). PG&E responded to MEA on August 22, 2013.

Advice Letter 3600-E

DRA's protest to AL 3600-E focused on three primary areas of concern: (1) the perceived allocation of risk borne by ratepayers through this agreement, (2) inadequate safeguards to assure project performance, and (3) that deliveries from the agreement are inconsistent with PG&E's demonstrated need for renewable generation.

PG&E responded to DRA's protest by arguing that this agreement presents a low-risk to ratepayers because the RECs would come from an existing, online project backed by a developer with significant assets. PG&E also contends that performance assurances are unnecessary because this agreement concerns RECs from an existing project. Additionally, PG&E responded that RECs from this agreement would help it meet its renewable net short position at the time this agreement was signed.

Advice Letter 3600-E-A

DRA's protest to AL 3600-E-A focused primarily on PG&E's acceptance of energy deliveries pursuant to this agreement prior to CPUC approval of this advice letter.

PG&E responded that it was authorized at the time through its CPUC-approved 2006 Conformed Long-Term Procurement Plan to make "short-term and bilateral forward energy purchases through bilateral transactions." PG&E contends that, in this case, it was authorized to purchase the energy at an indexed price and that it would true up with Barclays for the green attributes and the full contract price only after CPUC approval.

Advice Letter 3632-E

DRA's protest to AL 3632-E addressed the timing of PG&E's filing of that Advice Letter. PG&E filed AL 3632-E on March 12, 2010, a matter of days before the Commission issued Decision (D.) 10-03-021 on March 16, 2010 to establish rules for the use of RECs for RPS compliance purposes. DRA contends in its protest that AL 3632-E should have been re-filed to demonstrate consistency with D.10-03-021.

PG&E opposed DRA's protest on the grounds that the Commission could require the utility to file a supplemental advice letter demonstrating compliance with D.10-03-021 if it deemed necessary. For this reason, PG&E does not believe the issuance of the RECs Decision should impact AL 3632-E.

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The Commission does not agree with DRA that the allocation of risk to ratepayers or the adequacy of safeguards to ensure project performance are sufficient grounds for denial of AL 3600-E. Furthermore, the Commission has evaluated PG&E's current need for these short-term RECs in light of changed policies in California since 2010. Given this context, DRA's protest addressing PG&E's portfolio need in 2010 is a moot point.

The Commission also denies DRA's claim that PG&E lacked the authority to accept pre-deliveries of energy pursuant to the Barclays Agreements, and that PG&E erred in filing the Barclays Agreements before the Commission issued D.10-03-021. On the former, PG&E contends that it was authorized to accept these energy deliveries pursuant to its authority under the 2006 Conformed Long-Term Procurement Plan. This resolution does not address this issue, nor does it prejudice whether PG&E may appropriately seek cost recovery for these energy deliveries. As such, this protest is moot as it has no impact on the merits of the REC transaction under consideration in this resolution. On the latter protest, DRA's protest is rendered irrelevant by PG&E's subsequent submission of Supplemental AL 3600-E-A and Supplemental AL 3632-E-A to conform both agreements to D.10-03-021.

DRA's protests of Advice Letter 3600-E and Advice Letter 3632-E, based on multiple grounds and seeking rejection of PG&E's agreements for the purchase of RECs from Barclays, are denied.

Advice Letter 3632-E-C

MEA's protest to AL 3632-E-C raised two issues with PG&E's amendment to the original agreement for the purchase of RECs as filed in AL 3632-E. First, MEA argues that it is inappropriate for PG&E to have filed AL 3632-E-C as a supplemental advice letter because the substance of the request warrants the filing of a new, separate advice letter. MEA cites several examples of Amended and Restated Agreements which PG&E filed as new advice letters. Second, MEA contends that PG&E's modification of its original agreement for the purchase of RECs from Barclays makes the RECs procured therein ineligible for "grandfathering" status pursuant to Public Utilities Code Section 399.16(d).

PG&E responded to MEA's protest and urges the Commission to dismiss both issues that were raised. PG&E argues that it is appropriate to have filed AL 3632-E-C as a supplemental advice letter because the Commission has yet to dispose of the original advice letter. PG&E notes that, in each of the examples cited by MEA where PG&E filed new advice letters, the original agreements had already received Commission approval and PG&E was filing new advice letters to amend those agreements.

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Pursuant to the Commission's General Order 96-B, Section 7.5.1, "[t]he utility shall file a supplement . . . in order to make major revisions or corrections." The changes requested by PG&E in AL 3632-E-C are major revisions. As such, the Commission agrees with PG&E that it was appropriate for it to have filed amendments to its original agreement for the purchase of RECs to amend the price and remove REC quantities via a supplemental advice letter filing.

PG&E responded to MEA's second point by arguing that neither the removal of the RECs associated with energy generation in 2010 nor the amended price – the only two changes requested in supplemental filing AL 3632-E-C – constitute an "expansion or extension of a contract" in circumvention of the grandfathering provision found in Section 399.16(d).

The Commission agrees with PG&E. The appropriate treatment of the RECs for which PG&E seeks approval to procure in AL 3632-E-C is addressed below in the subsection titled "Demonstration of Need for the Agreements for the Purchase of RECs."

MEA's protest of Advice Letter 3632-E-C is denied because PG&E appropriately filed supplemental Advice Letter 3632-E-C and PG&E's request in that supplemental filing is consistent with the Commission's implementation of Public Utilities Code Section 399.16(d) in Ordering Paragraph 17 of D.11-12-052 and Ordering Paragraphs 12-13 of D.12-06-038.

No protests were filed to PG&E's AL 3600-E-B, AL 3600-E-C, AL 3632-E-A, or AL 3632-E-B.

## **DISCUSSION**

**Pacific Gas and Electric Company's (PG&E) agreements for the purchase of renewable energy credits (RECs) from Barclays Bank PLC (Barclays) are approved.**

Pursuant to its obligations under California's renewables portfolio standard (RPS) at the time that the Barclays Agreements were executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31, 2010, subject to various compliance rules. In an effort to meet this compliance obligation, PG&E executed the Barclays REC Agreements in 2010.

### Advice Letter 3600-E/E-A/E-B/E-C

PG&E filed Advice Letter (AL) 3600-E on January 6, 2010, as modified by ALs 3600-E-A/E-B/E-C, requesting the California Public Utilities Commission's (Commission) approval of the purchase and transfer of RECs from Barclays associated with renewable generation from the existing 100 megawatt (MW) Hay

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Canyon wind facility in Oregon. PG&E executed the original agreement with Barclays through bilateral negotiations.

Pursuant to the terms of the amended agreement, PG&E would pay for and accept deliveries of 250 gigawatt-hours (GWh) per year of energy from Barclays in 2010 and 2011, pursuant to existing authority<sup>6</sup> for PG&E to acquire short-term energy deliveries. This resolution does not address PG&E's authority to acquire these energy deliveries, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

Note that, originally, PG&E sought approval from the Commission to procure the RECs associated with both the 2010 and 2011 energy generation from the Hay Canyon wind facility. In May 2013, PG&E filed AL 3600-E-C to reduce the price of the RECs associated with generation from Hay Canyon and also to remove the RECs associated with the 2010 energy generation from the Hay Canyon agreement.

The agreement, as modified, would now require Barclays to transfer to PG&E only the RECs associated with the 250 GWh of energy generation (250,000 RECs<sup>7</sup>) from 2011 upon Commission approval of Advice Letter 3600-E/E-A/E-B/E-C.

Advice Letter 3632-E/E-A/E-B/E-C

PG&E filed Advice Letter AL 3632-E on March 12, 2010, as modified by AL 3632-E-A/E-B/E-C, requesting Commission approval of the purchase and transfer of RECs from Barclays associated with renewable generation from the existing 32 MW Nine Canyon Wind Phase III facility in Washington State. PG&E executed this agreement with Barclays through bilateral negotiations.

Pursuant to the terms of the agreement, PG&E would pay for and accept deliveries of 33 GWh per year of energy from Barclays in 2010 and 2011, pursuant to existing authority<sup>8</sup> for PG&E to acquire short-term energy deliveries. This resolution does not address PG&E's authority to acquire these energy

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<sup>6</sup> PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) authorized it to procure the energy associated with this transaction without prior Commission approval.

<sup>7</sup> One REC represents the renewable attributes associated with one MWh of eligible renewable generation.

<sup>8</sup> PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) authorized it to procure the energy associated with this transaction without prior Commission approval.



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deliveries, nor does it prejudice whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

Note that, originally, PG&E sought approval from the Commission to procure the RECs associated with both the 2010 and 2011 energy generation from the Nine Canyon wind facility. In July 2013, PG&E filed AL 3632-E-C to reduce the price of the RECs associated with generation from Nine Canyon and also to remove the RECs associated with the 2010 energy generation from the Nine Canyon agreement.

The agreement, as modified, would now require Barclays to transfer to PG&E only the RECs associated with the 33.6 GWh of energy generation (33,577 RECs) from 2011 upon Commission approval of Advice Letter 3632-E/E-A/E-B/E-C.

Table 1 below summarizes the features of the two REC Agreements:

**Table 1. Summary of PG&E's Agreements for Purchase of RECs from Barclays**

Counter-Party	Generating Facilities	Resource Type	Total REC Procurement	Contract Term <sup>9</sup>	Expected Compliance Period <sup>10</sup>	Project Location
Barclays Bank PLC	Hay Canyon	Wind	250,000	2011	CP1	Moro, Oregon
Barclays Bank PLC	Nine Canyon	Wind	33,577	2011	CP1	Kennewick, Washington

For a more detailed description of PG&E's agreements for the purchase of RECs from Barclays, see Confidential Appendix B (Hay Canyon) and Confidential Appendix C (Nine Canyon) of this resolution.

**PG&E requested that the Commission issue a resolution for the filed Advice Letter that contains the following findings:**

1. Approves the Agreement in its entirety, including payments to be made by PG&E pursuant to the Agreement, subject to the Commission's review of PG&E's administration of the Agreement.

<sup>9</sup> This represents the term of years during which the renewable generation with which these RECs are associated would be generated pursuant to the agreement.

<sup>10</sup> D.11-12-020 established three multi-year compliance periods (CP) as directed by SB 2 (1X) (CP1: 2011-13, CP2: 2014-16, CP3: 2017-20).

2. Finds that any procurement pursuant to the Agreement is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the Agreement shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
  - a. The Agreement is consistent with PG&E's 2009 RPS procurement plan.
  - b. The terms of the Agreement, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the Agreement:
  - a. The utility's costs under the Agreement shall be recovered through PG&E's Energy Resource Recovery Account.
  - b. Any stranded costs that may arise from the Agreement are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following finding with respect to resource compliance with the EPS adopted in R.06-04-009:
  - a. The Agreement is not a long-term financial commitment subject to the EPS under Public Utilities Code section 8340(j) because its contract term is less than five years.

**Energy Division Evaluated the Barclays REC Agreements on the Following Grounds:**

- Consistency with Bilateral Contracting Rules
- Consistency with RPS Standard Terms and Conditions
- Consistency with Commission rules regarding Renewable Energy Credits

- Consistency with PG&E's Least-Cost, Best-Fit Requirements
- Demonstration of Need for the Agreements for Purchase of RECs
- Price Reasonableness
- Procurement Review Group Participation
- Independent Evaluator (IE) Review

### **Consistency with Bilateral Contracting Rules**

PG&E negotiated the Barclays Agreements on a bilateral basis. PG&E entered into bilateral negotiations given its view at the time that the Barclays Agreements had favorable prices and terms. PG&E believed at the time that delaying procurement of these RECs until its next competitive solicitation could result in the utility failing to attain its 20% RPS procurement obligations.

The Commission developed guidelines pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the Commission authorized entry into bilateral RPS contracts provided that such contracts did not require Public Goods Charge funds and provided that they were "prudent." In D.06-10-019, the Commission established additional rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the Barclays Agreements are for longer than one month in duration, the Barclays Agreements were filed by advice letter, and the Barclays Agreements are reasonably priced as discussed in more detail below.

In D.09-06-050, the Commission also determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, PG&E attests that the Barclays Agreements were compared to other similar offers received by PG&E from its 2009 RPS RFO; the proposed Barclays Agreements were reviewed by PG&E's Procurement Review Group; and an independent evaluator oversaw the negotiation of the Barclays Agreements.

The Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

### **Consistency with RPS Standard Terms and Conditions**

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, six of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More

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recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, include all of the Commission adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

### **Consistency with Commission rules regarding Renewable Energy Credits**

In D.10-03-021, as modified by D.11-01-025, the Commission authorized the procurement and use of tradable RECs for compliance with the California RPS program. The decision also established a temporary price cap of \$50/REC and requirements for advice letters requesting approval of REC contracts.<sup>11</sup>

The prices of the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are below the temporary \$50/REC price cap as established in D.10-03-021, as modified by D.11-01-025.

### **Consistency with PG&E’s Least-Cost Best-Fit (LCBF) Requirements**

The LCBF decision directs the utilities to use certain criteria in their bid ranking.<sup>12</sup> The decision offers guidance regarding the process by which the utility ranks bids in order to select or “shortlist” the bids with which it will commence negotiations. PG&E’s bid evaluation includes a quantitative and qualitative analysis, as well as each proposal’s absolute value to PG&E’s customers and relative value in comparison to other proposals.

The basic components of PG&E’s LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission’s LCBF Decisions, D.03-06-071 and D.04-07-029. Consistent with these decisions, the three main steps undertaken by PG&E are: (1) initial data gathering and verification; (2) a

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<sup>11</sup> The REC price cap is a limit on the maximum that may be paid for unbundled RECs to be used for RPS compliance; it is not a REC price reasonableness benchmark. The REC price cap limit will sunset December 31, 2013 (See, Ordering Paragraphs 19 and 21 of D.10-03-021, as modified by D.11-01-025.) Advice letter requirements include information on the facilities providing the RECs, information on an IOU’s REC portfolio, and price comparisons of the RECs. (See, Ordering Paragraph 32 of D.10-03-021, as modified by D.11-01-025.)

<sup>12</sup> See D.04-07-029

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quantitative assessment of proposals, and; (3) adjustments to selection based on proposals' qualitative attributes. PG&E applied these criteria to the proposals received in the 2009 solicitation in order to establish a short-list of proposals from bidders with whom PG&E would engage in contract discussions. PG&E's 2009 RPS solicitation was the most recent solicitation at the time that the Barclays Agreements were negotiated and executed.

PG&E examined the reasonableness of the Barclays Agreements using the same LCBF evaluation methodology that it used for RPS offers received for the 2009 RPS solicitation. Although the Barclays Agreements were negotiated bilaterally, PG&E determined that the agreements were reasonable and compared favorably to proposals that PG&E received in its 2009 solicitation and to other bilateral offers negotiated around the same time.

The Commission finds that PG&E adequately examined the reasonableness of the Barclays Agreements utilizing its LCBF methodology during the time the agreements were being negotiated and executed.

### **Demonstration of Need for the Agreements for the Purchase of RECs**

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program. SB 2 (1X) established new RPS procurement targets such that retail sellers must procure "...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."

The rules for counting RECs for RPS compliance have changed since the time that PG&E executed the Barclays Agreements. Table 2 summarizes the application of these rules dependent on particular agreements for the purchase of RECs:

**Table 2. Summary of Commission Rules for Agreements for the Purchase of RECs**

REC Agreement <u>Executed</u> before June 1, 2010?	Energy associated with the RECs <u>Generated</u> prior to Jan. 1, 2011?	Controlling Commission Decisions (D.)	Restrictions on Application of RECs Against RPS Compliance Obligations:
Yes	Yes	D.10-03-021 (“the REC Decision”), as modified by D.11-01-025, and D.12-06-038.	RECs must be retired in WREGIS and accounted for in the Closing Report process established in D.12-06-038. RECs may count towards pre-2011 RPS compliance obligations.
Yes	No	D.11-12-052 (“the Product Content Category Decision”) and D.12-06-038 (“the Compliance Decision”).	RECs must be retired in WREGIS for RPS compliance purposes within 36 months from when they are generated. RECs may be counted for compliance with the California renewables portfolio standard without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).
No	No	D.11-12-052 (“the Product Content Category Decision”) and D.12-06-038 (“the Compliance Decision”).	RECs will be classified according to the portfolio content categories. RECs must be retired in WREGIS for RPS compliance purposes within 36 months from when they are generated.

The Barclays Agreements were executed before June 1, 2010 and the procured RECs would be associated with energy generated after January 1, 2011.

In light of recent information<sup>13</sup> provided to the Commission about PG&E’s current risk-adjusted net short position relative to its current RPS targets, the details of which are contained in Confidential Appendix A, the Commission finds that PG&E has no near-term need for the RECs in these agreements in the first, second, or third compliance periods.

That said, the Commission finds that PG&E has made a preliminary showing that the RECs associated with the 2011 energy generation from the Hay Canyon and Nine Canyon wind facilities may be counted for all compliance purposes toward the California RPS, including without regard to the quantitative

<sup>13</sup> See, Pacific Gas and Electric Company’s (U 39-E) 2013 Renewable Energy Procurement Plan, Appendix 1: Quantitative Information, “Current Expected Need Scenario (Compliance Period)” (June 28, 2013)

requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).

### **Price Reasonableness**

The Barclays Agreements were negotiated as bilateral contracts. The agreements were executed in 2010 before the Commission had adopted rules for the utilization of RECs for RPS compliance purposes. Additionally, as described above in the section titled “Demonstration of Need for Agreements for Purchase of RECs,” the Barclays RECs are unique in that PG&E has made a preliminary showing that the RECs associated with the 2011 energy deliveries from the Hay Canyon and Nine Canyon wind facilities may be counted for compliance with the California RPS without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).

Because of this unique quality that results from the changed regulatory landscape, there are few comparable agreements against which the Commission can compare the Barclays Agreements. As such, the Commission has assessed the reasonableness of the amended prices offered for these RECs against other RECs executed by PG&E during the same time period which may also “count in full” and against more recently executed RECs which are restricted by the portfolio content categories established by Pub. Util. Code § 399.16(c).

The prices of the Barclays RECs are reasonable when compared against these other RECs. The prices of these RECs are higher than the non-“count in full” RECs which the Commission approved in September 2012, but the price is also now significantly lower than the original price offered by Barclays for these RECs. The amended price is comparable to the price of the SPI RECs approved by the Commission in Resolution E-4560 in January 2013.

In conclusion, the Commission finds that the prices of the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are reasonable because PG&E has made a preliminary showing that the RECs associated with the 2011 energy generation from the Hay Canyon and Nine Canyon wind facilities may be counted for all compliance purposes for the California RPS, including without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).

Payments made by PG&E pursuant to the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C,

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are fully recoverable in rates over the life of the Agreement, subject to Commission review of PG&E's administration of these Agreements.

See Confidential Appendix A for a more detailed discussion of the price reasonableness of the Barclays Agreements.

### **Procurement Review Group (PRG) Participation**

The Procurement Review Group (PRG) process was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.

According to PG&E, the Barclays Agreements were discussed at its PRG meetings on August 14, 2009, October 21, 2009, May 17, 2011, May 17, 2013, and July 18, 2013. At the time, the Procurement Review Group ("PRG") for PG&E included the Commission's Energy Division and Division of Ratepayer Advocates, The Utility Reform Network ("TURN"), the California Utility Employees ("CUE"), and Jan Reid, as a PG&E ratepayer.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, and PG&E has complied with the Commission's rules for involving the PRG.

### **Independent Evaluator (IE) Review**

The IE for the Barclays Agreements was Arroyo Seco Consulting. The IE evaluated the Barclays Agreements at the time that they were negotiated and executed by PG&E in 2010 and concluded that the agreements compared favorably to alternative RPS options in the main evaluation categories of price, portfolio fit, viability, and market valuation.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Barclays and recommended both of the Barclays Agreements for approval at the time that PG&E originally filed the advice letters for Commission approval.



**RPS ELIGIBILITY AND CPUC APPROVAL**

Pursuant to Pub. Util. Code § 399.25, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>14</sup>

The Commission requires a standard and non-modifiable clause in all RPS REC-only contracts that requires “CPUC Approval” of an agreement to include an explicit finding that “any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.”<sup>15</sup>

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve a seller from its obligation to obtain CEC certification or absolve the purchasing utility of its obligation to enforce compliance with

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<sup>14</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>15</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the Barclays Agreements for the procurement of RECs associated with energy deliveries in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

### **CONFIDENTIAL INFORMATION**

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on September 25, 2013.

No comments were filed.

### **FINDINGS AND CONCLUSIONS**

1. Senate Bill 2 (1X) (Simitian, 2011) imposed significant changes on the RPS Program, including setting new RPS compliance targets through 2020 and beyond.
2. DRA's protests of Advice Letter 3600-E and Advice Letter 3632-E, based on multiple grounds and seeking rejection of PG&E's agreements for the purchase of RECs from Barclays, are denied.

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3. MEA's protest of Advice Letter 3632-E-C is denied because PG&E appropriately filed supplemental Advice Letter 3632-E-C and PG&E's request in that supplemental filing is consistent with the Commission's implementation of Public Utilities Code Section 399.16(d) in Ordering Paragraph 17 of D.11-12-052 and Ordering Paragraphs 12-13 of D.12-06-038.
4. The Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
5. The Barclays REC Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, include all of the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
6. The prices of the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are below the temporary \$50/REC price cap as established in D.10-03-021, as modified by D.11-01-025.
7. The Commission finds that PG&E adequately examined the reasonableness of the Barclays Agreements utilizing its LCBF methodology during the time the agreements were being negotiated and executed.
8. PG&E has no near-term need for the RECs in these agreements in the first, second, or third compliance periods.
9. PG&E has made a preliminary showing that the RECs associated with the 2011 energy generation from the Hay Canyon and Nine Canyon wind facilities may be counted for all compliance purposes for the California RPS, including without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).
10. The prices of the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are reasonable because PG&E has made a preliminary showing that the RECs associated with the 2011 energy generation from the Hay Canyon and Nine Canyon wind facilities may be counted for all compliance purposes for the California RPS, including without regard to the quantitative requirements for

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the use of each portfolio content category established by Pub. Util. Code § 399.16(c).

11. Payments made by PG&E pursuant to the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, are fully recoverable in rates over the life of the Agreements, subject to Commission review of PG&E's administration of the Agreements.
12. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C, and PG&E has complied with the Commission's rules for involving the PRG.
13. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Barclays and recommended the Barclays Agreements for approval at the time that PG&E originally filed the advice letter for Commission approval.
14. Any procurement pursuant to the Barclays Agreements is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining PG&E's compliance with any obligation it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), or other applicable law.
15. The immediately preceding finding shall not be read to absolve PG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the Barclays Agreements for the procurement of RECs associated with energy generation in 2011, as filed in Advice Letter 3600-E/E-A/E-B/E-C and Advice Letter 3632-E/E-A/E-B/E-C.
16. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
17. The Barclays Agreements considered herein were pending approval before the Commission during the time that policies were being developed to

address the use of RECs for RPS compliance purposes and during the time that Senate Bill 2 (1X) (Simitian, 2011) was signed into law.

18. Advice Letter 3600-E, as modified by Advice Letters 3600-E-A, 3600-E-B and 3600-E-C, requesting approval of the procurement of RECs associated with 2011 energy generation should be approved.
19. Advice Letter 3632-E, as modified by Advice Letters 3632-E-A, 3632-E-B and 3632-E-C, requesting approval of the procurement of RECs associated with 2011 energy generation should be approved.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's contract for the procurement of renewable energy credits associated with 2011 energy generation resulting from its power purchase agreement with Barclays Bank PLC, as filed in Advice Letter 3600-E, and modified by Advice Letters 3600-E-A, 3600-E-B, and 3600-E-C, is approved.
2. Pacific Gas and Electric Company's contract for procurement of renewable energy credits associated with 2011 energy generation resulting from its power purchase agreement with Barclays Bank PLC, as filed in Advice Letter 3632-E, and modified by Advice Letters 3632-E-A, 3632-E-B, and 3632-E-C, is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 14, 2013; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON  
PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President

MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL

MARK J. FERRON  
CARLA J. PETERMAN

Commissioners

## Confidential Appendix A

Pacific Gas & Electric's RPS Energy Forecast  
and the Price Reasonableness of the Barclays RECs

**[REDACTED]**

## Confidential Appendix B

### Summary of Barclays' Hay Canyon Contract Terms and Conditions

**[REDACTED]**



## Confidential Appendix C

### Summary of Barclays' Nine Canyon Contract Terms and Conditions

**[REDACTED]**